**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**Cr. Appeal No.305 Of 2005.**

**Date of decision: September 05,2007.**

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State of Himachal Pradesh. ……. Appellant.

Vs.

Kehar Singh. ……. Respondent.

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Coram

**The Hon'ble Mr.Justice Surjit Singh, Judge.**

**The Hon'ble Mr.Justice Surinder Singh, Judge.**

*Whether approved for reporting? No.*

**For the Appellant**: Mr.S.D. Vasudeva Addl. Advocate General with Mr. D.S.Nainta, Dy. Advocate General.

**For the respondent:** Mr. S.M. Goel, Advocate.

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***Surjit Singh, J(oral):***

This appeal by the State, is directed against the judgment of the trial court, whereby the respondent has been acquitted of the charge, under Section 302 of the Indian Penal Code.

Respondent was sent up for trial for the offence of murder by the police, on the following allegations. Deceased Tirath Ram and the respondent were seen together on 22nd February, 2003 at Bhunter. They went to the Dhaba of PW-4 Bhag Chand and took their meals around 5.30 p.m. From there, they went to the shop of Trilok Singh PW5. Deceased purchased utensils worth Rs.1700/- against cash memo Ext.PW5/A at that shop. Deceased and the respondent revisited the Dhaba of PW-4 and kept the utensils there for safe custody till the deceased collected the same on the next following day. From there, the

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***Whether reporters of local Papers may be allowed to see the judgment?***

deceased and the respondent went to the house of one Rakesh, a servant employed at the shop of PW-16 Hukam Ram. There, they started consuming liquor. Around 8.30 p.m. Hukam Ram (PW-16) and Tirlok Singh (PW13) noticed them consuming liquor at the place of said Rakesh Kumar. Since the owner of that place was Hukam Ram (PW16), he required the respondent and the deceased to leave that place, as they were consuming liquor unauthorizedly. Next day, around 9.00 a.m., dead body of the deceased Tirath Ram was spotted in the ground of a School at Bhunter, by someone, who informed PW-3 Uma Wazir, the Pradhan of the Panchayat and the latter, in turn, informed the police telephonically. Police reached the spot. Inquest was conducted. Dead body was sent for postmortem examination. The dead body was identified to be that of Tirath Ram by PW1 Dharam Chand and by PW2 Chande Ram. The latter is cousin of the deceased. Apparently, it appeared to be a case of killing by inflicting a head injury. So a case was registered under Section 302 of the Indian Penal Code. Police arrested the respondent on Ist March, 2003. He made a statement disclosing the place where the deceased was done to death, viz.. School ground. He was again interrogated and then he made a statement leading to the recovery of the utensils of the deceased from the shop of PW4 Bhag Chand. He made another statement that with the money removed from the pocket of dead body, he purchased a Scooter and got that scooter recovered. This statement he made on 5th March, 2003. He made yet another statement. This statement he made on 8th March, 2003 and pursuant thereto, a wrist watch of the deceased was recovered from his house.

Prosecution sought to prove the charge by leading evidence with respect to the following circumstances:-

(i) Deceased and the respondent were last seen together on the night preceding the day of recovery of the dead body;

(ii) Respondent pointed out the ground of the school as the place of occurrence and the dead body had also been recovered from that ground, earlier.

(iii) The respondent made a statement leading to the recovery of the wrist watch of the deceased.

(iv) The respondent purchased a Scooter on 25th February, 2003 with the money removed by him from the pocket of the deceased.

(v) The respondent made extra judicial confession to PW-13 Trilok Singh.

Trial court held that the prosecution had not proved the aforesaid circumstances and acquitted the respondent.

We have heard the learned Additional Advocate General and scrutinized the evidence, with respect to the aforesaid circumstances, as adduced by the prosecution.

Evidence of the prosecution with regard to the circumstance that the deceased was last seen in the company of the respondent is full of contradictions and therefore, not

believable. PW4 Bhag Chand though says that the respondent was in the company of the deceased when the latter visited his dhaba for taking meals, yet the date of the visit, given by him, is 5th March, 2003. According to the prosecution, the two visited the dhaba of this witness on 22nd February, 2003 and on the next following morning dead body of the deceased was found in the school ground. PW5 Trilok Singh, at whose shop the deceased allegedly purchased utensils does no say that he was accompanied by the respondent. PW13 Trilok Singh and PW-16 Hukam Ram, who allegedly saw the respondent and the deceased consuming liquor at the quarter of Rakesh Kumar, a servant of PW-16 Hukam Ram, do not say that they had seen the two consuming liquor at the aforesaid place. Not only this, the statement of the Chemical Examiner to whom the viscera was sent is to the effect that no liquor was found in the viscera.

The report is Ext.PY. Thus, this circumstance does not stand established.

Next circumstance is identification of the place of occurrence, i.e. School ground by the respondent. For two reasons, this so-called circumstance cannot be taken into consideration. First, no material fact was recovered on the basis of alleged statement of the respondent. Secondly, the alleged fact (a psychological one) viz. the knowledge of place of occurrence, was already known to the police, when the respondent made the disclosure statement on 5th March, 2003, because the dead body had been recovered from there on 23rd February, 2003.

Evidence with respect to the circumstance, regarding recovery of wrist watch of the deceased at the instance of the respondent is also doubtful. The respondent was arrested on Ist March, 2003. The police recorded four statements of the respondent during the course of the investigation. One statement was recorded on 5th March, 2003. This pertains to the keeping of utensils of the deceased at the shop of PW-4 Bhag Chand. Another statement he made on 6th March, 2003 about the disclosure of the place, where the incident took place. The statement, which led to the recovery of the wrist watch, was allegedly made on 8th March, 2003. By then, the respondent had been in custody of police for about 8 days. It has come in the evidence of the prosecution that the respondent had been beaten up by the police, before he made a statement. Reference may be made in this behalf to the testimony of PW2 Chande Ram, the cousin of the deceased. As a matter of fact, only this statement, that is to say the statement which allegedly led to the recovery of wrist watch of the deceased could be said to be relevant, for the purpose of connecting the respondent with the crime but according to the prosecution's own evidence, this statement was made eight days after his arrest and before that he made two other disclosure statements, which were neither relevant nor admissible, as noticed hereinabove. It has

come in the evidence, per statement of PW2 Chande Ram that 3-4 days before making the statement in question, the deceased disclosed that the wrist watch was with the other accused. The record of the case shows that the police had arrested one more man named Rakesh Sharma, alongwith the respondent. It has also come in evidence that before effecting the alleged recovery of wrist watch from the house of the respondent,

pursuant to his disclosure statement Ext.PW2/C, the police had visited the house of the respondent on 4th March, 2003, to effect the recovery of his clothes and thus had the opportunity of effecting the recovery of wrist watch at that time and also had an opportunity to plant the wrist watch at his place. Thus, the evidence with regard to the recovery of the wristwatch is also doubtful.

Not only this, the prosecution has failed to prove that the deceased was in fact wearing the wrist watch, on the relevant date or that the same in fact belonged to him. This was identified as belonging to the deceased only by PW2 Chande Ram, a cousin of the deceased and not by any family member of the deceased. Normally, persons other than the family members or very close friends are unable to identify the personal belongings of the relatives or persons of acquaintance.

Next circumstance is with regard to the recovery of the Scooter, allegedly purchased with the money removed from the pocket of the deceased. According to the prosecution, a scooter was purchased by the respondent from PW-2o Pawan Kumar. The witness, in his statement denies that he had any scooter or that he sold any scooter to the respondent. Otherwise also, there is no evidence indicating that the consideration, which the respondent allegedly paid as price of the scooter was the money, removed from the pocket of the deceased.

The last circumstance, relied upon by the prosecution, is that the respondent made extra judicial confession admitting his guilt to PW-13

Trilok Singh. But this witness denies that any statement about the admission of guilt was made by the respondent to him.

In view of the above discussed position, we are of the considered view that the trial court has rightly acquitted the respondent of the charge of murder. Hence, the appeal is dismissed.

Appeal having been finally disposed of and dismissed, the respondent, who was remanded in judicial custody, vide order dated 8.11.2005, is ordered to be released forthwith, in case his detention is not required in any other case.

**(Surjit Singh)**
**Judge.**

September 5, 2007.
(PDS)

**(Surinder Singh)**
**Judge**.